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November 23, 1993

BY HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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NOV 23 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Implementation of Sections 3(n) and 332 of the
Communications Act [GN Docket No. 93-252]**

Dear Mr. Caton:

There is transmitted herewith, on behalf of RVC Services, Inc., d/b/a Coastel Communications Co. ("Coastel"), by its attorneys, an original and nine copies of its Reply Comments in the above-referenced proceeding. Coastel also is filing these Reply Comments in a related proceeding, Petition for a Declaratory Ruling that GTE Airfone, GTE Railfone, and GTE Mobilnet are not Subject to the Telephone Operator Consumer Services Improvement Act of 1990 [File No. MSD-92-14], on this date.

If you have any questions concerning this matter, please contact this office.

Respectfully submitted,

HOGAN & HARTSON

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By

Richard S. Rodin

Richard S. Rodin
Attorneys for RVC Services, Inc.
d/b/a Coastel Communications Co.

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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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NOV 23 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
PETITION FOR A DECLARATORY)
RULING THAT GTE AIRFONE, GTE)
RAILFONE, AND GTE MOBILNET ARE)
NOT SUBJECT TO THE TELEPHONE)
OPERATOR CONSUMER SERVICES)
IMPROVEMENT ACT OF 1990)
)
IMPLEMENTATION OF)
SECTIONS 3(n) AND 332 OF THE)
COMMUNICATIONS ACT)

File No. MSD-92-14

GN Docket No. 93-252

TO: The Commission

REPLY COMMENTS OF RVC SERVICES, INC.

RVC Services, Inc. d/b/a Coastel Communications Co. ("Coastel"), by its attorneys, hereby submits its reply comments in the above-captioned proceedings.

In File No. MSD-92-14, the Commission has determined that providers of cellular pay telephone services in the Gulf of Mexico Service Area ("GMSA") are subject to the unblocking requirements of the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), and is considering the appropriate level of compensation that should be awarded to GMSA pay telephone providers. 1/ As the B Block cellular carrier in the GMSA, Coastel will be directly affected by the resolution of this issue. Coastel filed comments demonstrating its entitlement to

1/ Petition for a Declaratory Ruling, File No. MSD-92-14, Declaratory Ruling, DA 93-1022 at ¶¶ 25-28 ("Declaratory Ruling").

compensation in the amount of \$1.55 per minute on October 12, 1993. Reply comments were filed by AT&T and MCI on October 27, 1993. 2/

In GN Docket No. 93-252, the Commission has requested comment on a question that would make further consideration of the compensation issue in File No. MSD-92-14 moot. Specifically, the Commission has asked whether it should forbear from applying the requirements of TOCSIA to commercial mobile service providers in general or to any specific commercial mobile service providers. 3/ If the Commission determines that cellular carriers generally, or GMSA cellular carriers specifically, should be exempt from TOCSIA, there will be no need to develop compensation policies for those carriers.

Because of the interrelationship between these two proceedings, Coastel is filing consolidated comments that address the issues raised in both dockets. Commission action is necessary to ensure that it remains economically feasible for Coastel to continue to offer pay telephone service in the GMSA, which is the only means of communications for thousands of oil industry workers stationed on platforms in the Gulf. If Coastel is required to allow users of its pay telephones to access the interexchange carrier of their choice, Coastel must receive compensation in the amount of \$1.55 per minute to cover the costs of providing

2/ To the extent necessary, Coastel requests Commission leave to file reply comments in this proceeding (File No. MSD-92-14). The comment schedule originally adopted by the Commission did not provide for filing of further pleadings after October 27 1993. Declaratory Ruling at ¶ 28 n.45. However, the staff permitted Petroleum Communications, Inc. ("Petrocom"), the A Block carrier in the GMSA to respond to the comments of AT&T and MCI on Petrocom's request for compensation. See Reply of Petroleum Communications, Inc., File No. MSD-92-14 (Nov. 15, 1993). Considerations of fairness require that Coastel be given a similar opportunity to respond to the objections to its compensation proposal.

3/ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Notice of Proposed Rulemaking, FCC 93-454 at ¶ 68 (released Oct. 8, 1993) ("NPRM").

cellular airtime. Alternatively, the Commission should forbear from applying the requirements of TOCSIA to GMSA cellular carriers. Forbearance is appropriate because of the unique economics, and the private (not public) use of GMSA pay telephone service. Coastel believes that this approach is preferable because of possible technical problems with implementing a compensation proposal for GMSA payphones.

I. COASTEL MUST BE COMPENSATED IN THE AMOUNT OF \$1.55 PER MINUTE IF IT IS REQUIRED TO UNBLOCK ITS PAYPHONES

If Coastel is required to comply with TOCSIA's unblocking requirements, it must be compensated for the costs of the valuable airtime it provides. Absent adequate compensation, Coastel simply will be unable to continue to provide this much-needed service. As Coastel has demonstrated, it is entitled to compensation in the amount of \$1.55 per minute. The objections of AT&T and MCI to Coastel's compensation proposal are irrelevant because they do not take into account the unique characteristics of Coastel's service.

Coastel has shown that the compensation level it is requesting is reasonable given the value of the service it is providing. ^{4/} Evidence concerning the applicable costs of providing the service also supports Coastel's compensation request. Coastel pays approximately \$2500 per telephone for acquisition and installation costs alone (not including transportation costs which, given the distant location of the off-shore sites, are extraordinarily high). ^{5/} The airtime Coastel supplies has time-sensitive costs, and thus a time-sensitive compensation

^{4/} See Coastel MSD-92-14 Comments at 7-9.

^{5/} Id. at 6.

mechanism for usage is appropriate. 6/ Provided as Exhibit A to these reply comments is a complete breakdown of the costs Coastel incurs in providing GMSA pay telephone service. That Exhibit shows that Coastel's airtime charges are set to recover costs and provide a small margin of profit. Neither MCI nor AT&T has presented evidence to contradict Coastel's showing that the compensation level it is seeking is reasonable given the value of the service Coastel provides and the underlying costs.

MCI nevertheless suggests that Coastel's compensation should be limited to the \$6 per payphone per month charge that has been approved for other payphone operators ("PPOs"). 7/ MCI claims that there is no reason to treat the GMSA cellular pay telephone providers differently from other PPOs. This claim is simply absurd. Coastel and Petrocom have both clearly demonstrated the justification for treating them differently -- the costs of providing airtime to users of pay telephone services in the Gulf of Mexico are different and are substantially greater than the costs of offering landline payphone service. 8/ The cost "surrogates" the Commission used to arrive at the \$6 per phone per month figure simply do not accurately reflect GMSA pay telephone costs.

MCI argues that the Commission has rejected a cost-based approach to payphone compensation generally and should not apply such an approach to GMSA operators. 9/ But the primary rationale for the Commission's decision not to rely on

6/ Id. at 7-8.

7/ MCI MSD-92-14 Reply Comments at 1.

8/ For example, in order to service its off-shore payphones, a helicopter must be used to reach the sites, a trip which might take several hours, at a cost of \$3,000-4,000 a day.

9/ Id. at 2-3.

cost information for PPOs was the unavailability of reliable cost data. Here both Petrocom and Coastel have provided full documentation of the costs of providing GMSA service. While it is true that the Commission has not required cellular carriers (or PPOs generally) to comply with the Uniform System of Accounts, that fact alone should not bar GMSA pay telephone providers from receiving adequate compensation for the valuable service they are supplying.

MCI also suggests that the GMSA carriers recover their airtime costs by installing credit card or debit card phones to permit direct billing of the user. Neither of these options is realistic. All Coastel's payphones are currently equipped with "swipe" mechanisms that permit the caller to charge the call to a credit card. However, despite this option, at least 90% of the calls made from Coastel's pay telephones are collect or third-party billed. 10/ The fact remains that most off-shore oil industry employees who use Coastel's equipment simply do not have personal credit cards. Id. Nor are debit cards a realistic option. There is simply no practical way for Coastel to sell debit cards to the platform workers that are served by Coastel's pay telephones.

Coastel simply cannot continue to offer pay telephone service in the Gulf if its compensation is limited to \$6 per instrument per month. Instead, Coastel will be forced to terminate its existing service. In addition to depriving Coastel of the fastest-growing portion of its revenue stream, 11/ this result will leave the men and women who currently depend on Coastel's payphones with no way to communicate with their families and friends during their lengthy (7 or 28 day) shifts. This perverse outcome is clearly inconsistent with the pro-consumer intent of TOCSIA. Accordingly, Coastel respectfully requests that the Commission award

10/ Coastel MSD-92-14 Comments at 7 n.12.

11/ Id. at 5-6.

it compensation in the amount of \$1.55 per minute for connecting GMSA payphone users with the IXC of their choice.

**II. ALTERNATIVELY, THE COMMISSION SHOULD EXEMPT
GMSA PAYPHONE PROVIDERS FROM TOCSIA**

An alternative, and in Coastel's view preferable, solution is to forbear from applying the TOCSIA requirements to GMSA pay telephone operators. Forbearance is clearly appropriate here because enforcement of the TOCSIA rules is unnecessary to protect consumers. To the contrary, as discussed above, GMSA pay telephone service will be terminated if unblocking is required and adequate compensation is not awarded.

The NPRM lists three factors that Congress instructed the Commission to consider in determining whether forbearance treatment is appropriate. 12/ In this case, all three elements of the test are met.

The first factor requires the Commission to determine that enforcement of the relevant statutory provision is not needed to ensure that rates, terms, and conditions of service are not unreasonable or discriminatory. This prong of the test is clearly satisfied here. The information that has been provided in MSD-92-14 demonstrates that the current rates Coastel and Petrocom have been charging for cellular airtime absent any regulation by the Commission are reasonable given the underlying costs of the service. Furthermore, the growth in use of the service strongly suggests that consumers find GMSA pay telephone service to be priced at a reasonable level. In addition, the two Gulf carriers compete for the provision of this service. In fact, many of the locations where Coastel has installed payphones, Petrocom also has a payphone available. As a result, neither

12/ NPRM at 22-23.

carrier could increase rates unreasonably, because callers would then simply choose the cheaper option. Thus, requiring that GMSA operators provide access to alternative IXCs is plainly not necessary to ensure reasonable, nondiscriminatory rates.

Nor is regulation necessary for the protection of consumers. The Commission should understand initially that the potential users of Gulf pay telephone service comprise a very limited group. Coastel has installed cellular payphones on various drilling rigs, production platforms and marine vessels in the GMSA. However it is critical to understand that these payphones are not available to the public -- the payphones are installed only on private facilities and can be used only with the express consent of the owner of the facilities. They are intended for the exclusive use of employees or contractors who rotate in and out of their 7 or 28-day shifts assigned to that facility. Indeed, all platforms and vessels off-shore are governed by international maritime laws and strict security, safety and insurance requirements, which provide that no one may board any such platform or vessel without the express consent of the owner. Thus, GMSA payphones, unlike on-shore payphones, are not, and cannot be, visited by the general public or casual passersby. These off-shore payphones are intended for the sole private use of personnel assigned to specific off-shore locations or vessels.

The users of these payphones are adequately protected without the need for applying the TOCSIA requirements to GMSA cellular operators. As noted above, the rates and conditions for Gulf telephone service are reasonable now, and competition between the two Gulf carriers will protect consumers against unjustified rate increases. Furthermore, Coastel has already demonstrated that it will have to terminate this valuable service if it is forced to provide unblocked access without appropriate compensation. Obviously that result is contrary to the

interests of the users who rely on GMSA pay telephones to communicate with their family and friends. Thus, the second prong of the test is satisfied as well.

The third factor, whether forbearance would promote competitive market conditions, is also met. If the Commission does not forbear from applying the TOCSIA requirements, and in the absence of adequate compensation, neither Coastel nor its competitor Petrocom will be able to provide GMSA payphone service at all. This is not a situation where landline carriers offer an alternative to the relevant mobile service -- instead, the result will simply be that the service is unavailable. Accordingly, forbearance is necessary here to ensure that the existing competitive provision of GMSA pay telephone service can be maintained.

Coastel believes that forbearance from regulation is preferable as a technical matter to requiring GMSA pay telephone providers to offer unblocking and awarding them compensation. There is some question as to whether IXCs can accurately identify calls that originate at cellular pay telephones in order to assess any required per minute fee for compensation purposes. ^{13/} If, in fact, IXCs are unable to impose the necessary airtime charges, then compensation may not be a viable option. In that event, forbearance from applying the TOCSIA requirements will be the only way the Commission can ensure that the critical service provided by GMSA cellular payphone operators continues to be available.

In short, given the unique circumstances of operating payphones in the GMSA, and the restricted private use made of those payphones, the Commission's regulatory treatment of the GMSA pay telephone operators should reflect this situation. Clearly, forbearance by the Commission from applying the TOCSIA requirement would be both appropriate and necessary to allow for the continued operation by Coastel of its GMSA payphones.

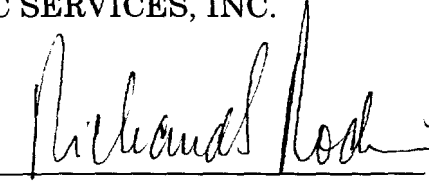
^{13/} See MCI MSD-92-14 Reply Comments at 3-4.

CONCLUSION

For the foregoing reasons, Coastel respectfully requests that if it is required to comply with the unblocking requirements of TOCSIA, it be awarded compensation in the amount of \$1.55 per minute. In the alternative, Coastel requests that the Commission forbear from applying TOCSIA to GMSA cellular carriers.

Respectfully submitted,

RVC SERVICES, INC.

By 

Richard S. Rodin
Karis A. Hastings

Its Attorneys

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Washington, D.C. 20004
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November 23, 1993

Exhibit A

Coastel Payphone Costs and Compensation July 1, 1992 - June 30, 1993 (Calculated on a per-minute basis)

<u>Item</u>	<u>Amount/Minute</u>
Airtime Revenue	\$1.55
Costs	
Interconnection (75% Home Carrier, 25% Roam)	.7583
Payphone Royalty Charge	.1550
Validation, Billing & Collections	.0619
Bad Debt	.1573
Payphone Equipment Depreciation	.1458
Maintenance and Administrative Overhead	<u>.1937</u>
Total Costs	\$1.4720
Coastel Margin Recovered per Minute	\$0.078

DECLARATION OF TIM KOCH

I, Tim Koch, Director of Finance and Administration of RVC Services, Inc., declare under penalty of perjury that I have read the foregoing Reply Comments of RVC Services, Inc. and that the statements contained therein, except those of which official notice may be taken, are true and correct to the best of my knowledge, information and belief.



Tim Koch

Executed on: November 23, 1993

CERTIFICATE OF SERVICE

I, Gayle H. Hall, hereby certify that copies of the "REPLY
COMMENTS OF RVC SERVICES, INC." were mailed by United States mail,
first-class, postage prepaid, this 23rd day of November, 1993 to the following
parties:

* John Cimko, Jr., Esq.
Chief, Mobile Services Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 644
Washington, D.C. 20554

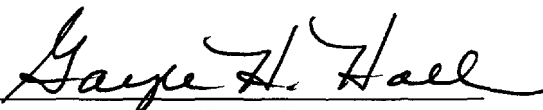
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Gayle H. Hall

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